



TOWN OF HUDSON

Zoning Board of Adjustment



J. Bradford Seabury, Chairman Ben Nadeau, Selectmen Liaison

12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6000 • Fax: 603-594-1142

HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES April 24, 2014

I. CALL TO ORDER

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:35pm on Thursday, April 24, 2014, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Dearborn to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: Donna Shuman, and J. Bradford Seabury

Members

Absent: Normand Martin, Jim Pacocha, and Mike Pitre (All Excused)

Alternates

Present: Gary Dearborn, Kevin Houle, and Maurice Nolin

Alternates

Absent: Maryellen Davis and Marilyn McGrath (All Excused)

Staff

Present: William Oleksak, Zoning Administrator

Recorder: Trish Gedziun

II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearsings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

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Chairman Seabury seated Mr. Nolin in place of Mr. Martin, Mr. Houle in place of Mr. Pitre, and Mr. Dearborn in place of Mr. Pacocha, who were all excused.

III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

- 1. Case 206-016-000 (04-24-14): Doug & Eileen Gagnon, 19 Pasture Drive, Hudson, request a Variance from the literal provisions of the Hudson Zoning Ordinance, Article VII of HTC Section 334.27, Table of Minimum Dimensional Requirements, in order to permit the following change of use for property located at 19 Pasture Drive: to allow the existing above-ground pool to remain within the side-yard setback, where 15 feet is required, and approximately 6 feet is existing.**

Clerk Dearborn read aloud the posted notice, as recorded above.

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that when the pool was originally installed, the applicant had relied on a survey marker and thought he knew where the property line was. He was then made aware by his neighbor that the actual angle was a little bit different and therefore, the pool was put closer to the property line than he had thought.

Chairman Seabury read aloud a letter from David and Tracey Bloom, 18 Pasture Drive, abutters of applicant, dated April 22, 2014, stating that they were in support of the applicant's request and were confident that the error made was an innocent one.

Chairman Seabury read aloud a letter dated November 5, 2013, addressed to the Community Development Department, from Alfred A. Monterio, 17 Pasture Drive, stating that as an abutter, he had no issue with the location of the applicant's pool and that when his property was surveyed on June 6, 2013, it was discovered that the Gagnon's belief from prior surveyors was mistaken as to the location of the side property line. The letter also stated that the Gagnon's had lived at 19 Pasture Drive for 22 years and he had respected their guidance as he continued to improve his property. The letter continued by saying that they were both surprised by the outcome of the survey but neither one of them had an issue with the location of the pool. The Gagnon's were compliant and followed the permit process perfectly. They have enjoyed their pool over the past year and he saw no reason for them not to continue to do so in the future.

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. David Gagnon and Mrs. Eileen Gagnon, the applicant's, addressed the Board, stating that the pool had been installed based on what they thought was the correct property line. Mr. Gagnon stated that he took what

he thought was the correct measurements and obtained a permit from the town. He said the discrepancy came to his attention when his neighbor had his property surveyed.

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Mrs. Eileen Gagnon read aloud from the Application for a Variance summarized as follows:

1. *Granting of the requested Variance will not be contrary to the public interest because our pool will not conflict with or impact any of our neighbors or the town. The pool is not a permanent structure and was done with complete thought and care to do all necessary parts of it up to code and as it should be. The property line was thought to be marked in one area as it was surveyed over 20 years ago.*
2. *The proposed use will observe the spirit of the ordinance because as stated above, all was done with good conscience and our neighbor was apprised of each step we took and agreed with it.*
3. *Substantial justice would be done to the property owner by granting the Variance because we take pride in our home and think things out thoroughly before we do it. We saved our money for 5 years to have this pool. To move this pool even a few feet will damage the integrity of the pool and the cost to move it will be more than we can afford.*
4. *The proposed use will not diminish the values of surrounding properties because our pool was tastefully done and is very aesthetically pleasing to our neighbors. We are always very attentive to our land.*
5. *Special conditions exist such that literal enforcement of the ordinance results in **unnecessary hardship** because if we moved the pool it could cause a loss in integrity of the pool and moving it would prove to be very costly.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application.

Mr. Alfred Monterio, 17 Pasture Drive, an abutter, addressed the Board stating that he had no problem with the pool and would hate to see the applicants be burdened with the hardship of having to move the pool.

Chairman Seabury asked if there were anyone else present who wished to speak in favor, in opposition or neutrally with regard to the application. No one else came forward.

Chairman Seabury declared the matter before the Board.

Mr. Houle stated that there was a picture attached to Mr. Monterio's letter and asked what the date of that picture was. Mr. Gagnon replied that the picture was taken before the pool was installed.

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Mr. Nolin asked what the plan would be when the above-the-ground pool had reached its' life expectancy? Mr. Gagnon replied that he would have guessed it was about ten years. Mr. Nolin asked that if the pool needed to be replaced if it would be relocated or be put back in the same location. Mr. Gagnon replied that he did not plan on replacing the pool.

Chairman Seabury asked if the Board were to grant the Variance, if the applicants would be amenable to a stipulation that in the event the pool ever had to be replaced, it would be replaced outside of the setback. The applicants both verbally agreed that they were amenable to that.

Mr. Nolin made a motion to approve the request for a Variance with the stipulation that if the pool were ever to be replaced, that the replacement pool would be placed outside of the side-yard setbacks.

Mr. Dearborn seconded the motion.

Mr. Nolin, speaking on his motion, stated that denying the request and asking the applicant's to move the pool would create an undue hardship for them and that they had some pretty outstanding neighbors.

Mr. Dearborn, speaking on his second, stated that he had viewed the site and that the pool was barely visible and said he had no problem approving the Variance. He also said that he felt the applicants were very good neighbors.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to approve the request for a Variance, with the noted stipulation, and to record the members' votes, which were as follows:

Mr. Nolin	To approve
Mr. Dearborn	To approve
Ms. Shuman	To approve
Mr. Houle	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for a Variance, with the noted stipulation, the motion had carried.

- 2. Case 168-003-000 (04-24-14): Vincent & Cheryl Russo, 14 Greeley Street, Hudson, request a Variance from the literal provisions of the Hudson Zoning Ordinance, Article VII of HTC §334-27, Table of Minimum Dimensional Requirements, in order to permit the following change or use: build a porch that will encroach into side-yard setback. Required setback is 15', proposed setback to be 10' 8."**

Clerk Dearborn read aloud the posted notice, as recorded above.

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Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak explained that the application was a renewal of a previously approved Variance that was granted on December 9, 2010.

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Vincent Russo, the applicant, addressed the Board, stating that his house sat on a lot that had a strange angle. He said that although an addition had been put on the house which was within the setback, he had discovered that the porch he wanted to add on did not. He said the house sat on a corner lot and there were no abutters on the side that the proposed porch would be. He also said that the buffer area would block the porch from being seen.

Chairman Seabury informed Mr. Russo that he could request that all of the information previously submitted should become a part of this meetings public record, but that he should summarize the Application for a Variance.

Mr. Russo then read aloud from the Application for a Variance summarized as follows:

- 1. Granting of the requested Variance will not be contrary to the public interest because the structure will not hinder access to Crystal Drive or Greeley Street. We are on a corner lot. It would not be out of character with other neighborhood dwellings because it is a similar structure and it would not obstruct the view or interfere with the rights of the abutting property owners.*
- 2. The proposed use will observe the spirit of the ordinance because it is our opinion that the ordinance was designed to prevent the overcrowding of dwellings and to allow access for emergency as well as non-emergency vehicles. The setback encroachment proposed on the southeast side of the property line abuts the buffer area and the buffer area provided screening for lot 3 from the private way. We conclude that lot 2 can no longer be further developed along this property line. The proposed 10'8" setback still provides ample access room for emergency vehicles should the need arise.*
- 3. Substantial justice would be done to the property owner by granting the Variance because the screened in porch would allow us to be outdoors later into the evening hours when the typical insects and pests become active. It would also allow for another egress.*
- 4. The proposed use will not diminish the values of surrounding properties because it would not be typical for a screened in porch to diminish the surrounding property values. Many homes in the neighborhood have porches and have customized their homes to include porches. In fact, it would probably increase the value of the house.*

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- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because the benefits to the owner cannot be achieved by any other method.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor, in opposition, or neutrally with regard to the application. No one else came forward.

Chairman Seabury declared the matter before the Board.

Mr. Dearborn stated that he was not a member of the Board when the case was previously heard and asked where the proposed porch would be located and what the size would be. Mr. Russo replied that it was a 14' x 14' porch. He also replied that a small 21' x 30' garage had been added to the property and that it staggered slightly off of the front of the home and more to the back. He said that that addition had a family room above it and that was where the access of the proposed porch would be located – noting that a small portion of it would encroach into the setback.

Mr. Dearborn asked if this request was identical to the one that was previously before the Board. Mr. Russo replied that it was.

Chairman Seabury stated that no one would be able to see the proposed addition through the trees unless they were being particularly nosey.

Ms. Shuman stated that she had assumed that the applicant had used the same abutters list used at the initial hearing. Mr. Russo replied that he did except for one change. Ms. Shuman said that her issue was that the date on the abutter's list was December 10, 2009, and she wanted to verify that the list had not changed since then.

Chairman Seabury asked if Ms. Shuman was concerned that an abutter was not notified. Ms. Shuman replied that she had assumed that the applicant verified the list but further replied that her problem was that the file would reflect a 2010 abutter's list. She said it actually said 2009 and that Julie had ok'd it in 2010. Ms. Shuman said that there was no evidence that the list had been verified for 2014. She also said that the applicant had added an abutter and she could not tell if it was added in 2009, 2010, or 2014.

Chairman Seabury asked Mr. Russo what the addition to list was. Mr. Russo replied that there was one abutter who moved out and another person moved in. He said the name added to the 2014 abutter list was Lyndsay Galloway.

Chairman Seabury asked Mr. Oleksak if he knew whether or not the list had been checked. Mr. Oleksak replied that it was checked.

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Ms. Shuman stated that she was fine with that as long as the words “ok’d in 2014” were added to the bottom of the list. Chairman Seabury stated that Mr. Oleksak would do that.

Mr. Houle made a motion to approve the request for a Variance.

Ms. Shuman seconded the motion.

Mr. Houle, speaking on his motion, stated that he felt the Variance had previously been granted and it seemed to have been a well thought out plan. He also stated that he felt confident, with Mr. Oleksak’s approval, that all of the appropriate abutter notifications were sent out.

Ms. Shuman, speaking on her second, stated that she agreed with Mr. Houle and that the applicant had demonstrated that nothing had changed from the initial Variance that was already granted in 2010.

Ms. Shuman asked if the applicant had intended on using the same plan from 2010. Mr. Russo replied that he did.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to approve the request for a Variance and to record the members’ votes, which were as follows:

Mr. Houle	To approve
Ms. Shuman	To approve
Mr. Nolin	To approve
Mr. Dearborn	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for a Variance, the motion had carried.

- 3. Case 228-036-000 (04-24-14): Jose Kurchevski, 3 Ridgcrest Drive, Hudson, requests a Special Exception to allow an Accessory Living Unit (ALU) to be built in an existing converted garage on site, connected to the main house with a door into the main house [Map 228, Lot 036, Zoned R2; HZO Article XIII A, Section 334-73.3 Accessory Living Units.]**

Clerk Dearborn read aloud the posted notice, as recorded above.

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that any time someone applied for a building permit to construct an Accessory Living Unit; they had to first appear before the Zoning Board of Adjustment to get permission to do so.

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Chairman Seabury asked who was to present to speak in favor with regard to the application.

Mr. David A. Kinsella, from tbc Architects Design Build, representing the applicant, addressed the Board, stating that the proposed ALU would be occupied by the owner's daughter and son-in-law, Amanda and David Gonzaga.

Mr. Kinsella stated that the house was an existing Cape with an attached garage and the proposed plan was to remove the out-buildings around the garage and then to raise the roof of the garage to create the in-law apartment. He further stated that it would be open living on the lower level and two bedrooms with a bathroom on the upper level. Mr. Kinsella said that the proposed ALU would meet all of the setback requirements. Mr. Kinsella submitted a rendering of the proposed ALU to the Board.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application.

Mr. David Gonzaga addressed the Board, stating that he had recently been married to Amanda (Kurchevski) Gonzaga, who was Jose Kurchevski's only daughter. He said that Jose had asked that they live close to him.

Mr. Kinsella then read aloud from the Application for an Accessory Living Unit summarized as follows:

- 1. An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwellings, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. It is an existing single family dwelling.*
- 2. An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. The proposed ALU will be in an existing covered garage connected by a door into the main house.*
- 3. An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. The proposed ALU will be occupied by the daughter and son-in-law of the property owner, David and Amanda Gonzaga.*
- 4. The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU. The front face will appear as a single family dwelling with windows on the front.*

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5. *At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. There will be a door to the main house within the proposed ALU. The main entrance to the ALU will be located on the side on the existing structure.*
6. *Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit. Separate utility connections will not exist but it will have interconnected smoke alarms.*
7. *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. The existing carport will be demolished allowing for ample parking for both the main dwelling and the proposed ALU.*
8. *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principle structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ALU. The proposed ALU is to be inside of the existing converted garage. The roof is to be raised to provide correct headroom and this leads to a 1,300 SF ALU within the structure.*
9. *A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have an interconnected smoke alarms per Section R313.2.1 of the 2006 IRC Building Code. We are here to get approval.*

Chairman Seabury asked the members of the Board if they had any issue with the size of the proposed ALU.

Ms. Shuman asked what the square footage of the existing main home was because not only was the proposed total of 1,300 SF 300 SF over the maximum amount of room, but she felt it may have also exceeded the 50% of living space allowed as well.

Mr. Kinsella replied that it did exceed it, that the existing main home was 1,000 SF. He said that the main house was a 24' x 36' Cape and therefore, the proposed 1,300 SF would exceed the 50% of living space allowed. He further said that the applicant was asking for a concession on that point to be able to add a second bedroom.

Chairman Seabury stated that the only issue he had with that was that a Variance would be needed as well.

Mr. Dearborn asked if the applicant would access the main house through a crawl space. Mr. Kinsella replied that they would not.

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Chairman Seabury addressed the Board and stated that there had been a similar case before them in the past. He said that ostensibly, a Special Exception was easier to get than a Variance and therefore, the Board felt that it should have been re-noticed because the neighbors had not been warned that it was a Variance request. He further said that he did not have an issue with it but he was concerned that it had been a precedent to re-notice in the past.

Ms. Shuman stated that she was also concerned that it was looking more like a duplex instead of a single family home. She also said that it may not appear to be a duplex visually but that if it were to be sold sometime down the road, it might be sold as a duplex.

Chairman Seabury replied that he would hope that whoever was in charge of code enforcement at that point in time would prevent that from happening.

Mr. Kinsella stated that it was a reverse situation because usually it was the elderly parents that were moving into an ALU but in this case, it was a young couple.

Ms. Shuman stated that the Board had heard a similar case in the past but that the owner had “swapped” living areas with the younger couple.

Ms. Shuman stated that she felt the applicant needed a Variance. Mr. Dearborn stated that he concurred.

Ms. Shuman made a motion that the applicant needed to request a Variance to allow for the 50% of living space allowed or the 1,300 SF for the size of the proposed ALU.

Mr. Dearborn seconded the motion.

Ms. Shuman, speaking on her motion, stated that she had nothing to add to her motion.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to require the applicant to request a Variance to allow for the 50% of the living space allowed or the 1,300 SF for the size of the proposed ALU, and to record the members’ votes, which were as follows:

Ms. Shuman	Variance required
Mr. Dearborn	Variance required
Mr. Houle	Variance required
Mr. Nolin	Variance required
Mr. Seabury	Variance required

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Chairman Seabury declared that, there having been five votes to require the applicant to request a Variance to allow for the 50% of the living space allowed or the 1,300 SF for the size of the proposed ALU, the motion had carried.

Chairman Seabury informed the applicant to review the requirements of a Variance very carefully because he did not believe that the Board had approved a similar request in the past.

Mr. Kinsella asked if the applicant were willing to reduce the total square footage of the proposed ALU to 1,000 SF if the Board could hear the request at this meeting.

Ms. Shuman replied that while she was okay with that, the plan that the applicant had submitted did not show that.

Chairman Seabury asked Mr. Kinsella how that would be done. Mr. Kinsella replied that he would do it by reducing the amount of bedrooms to one instead of two.

Chairman Seabury asked if the roof would still be raised. Mr. Kinsella replied that in this case they would build under the existing roof. Chairman Seabury asked how much head room there would be under the existing roof. Mr. Kinsella replied that there would be enough room to stand up but that he may have had to add a dormer. He further replied that he would have to look into it but that he would provide plans to Mr. Oleksak to make sure that they were in compliance.

Mr. Dearborn commented that he would like to see a new plot plan given all of the proposed changes.

Mr. Oleksak stated that he felt the case should be deferred until the next meeting which would enable the applicant to submit a new plan.

Chairman Seabury suggested that the case be deferred until the next meeting and that the applicant come back with the same request with a request for a Variance and also something that would meet the special exception requirements.

Mr. Houle made a motion to defer the case, date specific, to the May 22, 2014, meeting.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of deferring the case, date specific, to the May 22, 2014, meeting.

Ms. Shuman stated that the homeowner had not signed the letter which indicated who the intended occupant(s) of the proposed ALU would be. She also stated that the homeowner had also not signed the

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application and asked if both documents could be appropriately signed by the next meeting. Mr. Kinsella replied that they would.

- 4. Case 154-014-000 (04-24-14): Nathan Bellorado, 14 Hartson Circle, Hudson, requests a Special Exception to allow an Accessory Living Unit (ALU) to be built in an existing garage, connected to the principal dwelling via an enclosed porch [Map 154, Lot 014, Zoned R1; HZO Article XIII A, Section 334-73.3 Accessory Living Units.]**

Clerk Dearborn read aloud the posted notice, as recorded above.

Chairman Seabury asked Mr. Oleksak to explain why the matter was before the Board. Mr. Oleksak replied that the matter was before the Board for the same reason as listed in the above posted notice.

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Nathan Bellorado, the applicant, addressed the Board, stating that the proposed ALU was for his mother-in-law, Amy McMullen. He then read aloud from the Application for an Accessory Living Unit summarized as follows:

- 1. An ALU is allowed only in one-family dwellings. An ALU is not allowed in a two-family or multi-family dwellings, or any non-residential uses. An ALU is expressly prohibited in an Open Space Development. 14 Harston Circle is a one-family Colonial style home. The neighborhood was developed in the 70's and is not in an open space development.*
- 2. An ALU is not allowed as a free-standing, detached structure or as part of any structure which is detached from the principal dwelling. The proposed ALU is the attached 2-car garage and it's connected to the principal dwelling via an enclosed porch.*
- 3. An ALU is to be occupied only by immediate family members (by blood or marriage) of the owner of record of the principal dwelling. An ALU is not allowed in any principal dwelling in which the owner of record of the principal dwelling does not personally reside. The proposed ALU will be occupied by my mother-in-law, Amy McMullen.*
- 4. The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ALU. The front face of the principal dwelling appears as a single family Colonial style home with an attached garage and finished space above the garage. The garage door will be replaced with two windows.*
- 5. At least one common interior access between the principal dwelling unit and an ALU must exist. A second means of egress from an ALU must exist and be located at the side or rear of the structure. The proposed ALU will be connected to the principal dwelling via a common*

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interior enclosed porch. The enclosed porch leads from the kitchen/dining room of the principal dwelling to the kitchen/dining room of the proposed ALU.

6. *Separate utility service connections and/or meters for the principal dwelling unit and an ALU shall not exist. (This does not preclude using a type of heating system for an ALU different from the type for the principal dwelling unit. The proposed ALU will be on the same utility service connections/meters as the principal dwelling will have.*
7. *Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ALU. There is off-street parking for six vehicles.*
8. *The gross living area (GLA) of an ALU shall not be less than 350 square feet, and shall not exceed fifty percent of the principle structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ALU. The principal dwelling is 1,724 square feet and the proposed ALU is 765 square feet. 447 square feet on the bottom and 318 square feet on the top. This is 50% less of the principal unit and is less than 1,000 square feet.*
9. *A Building Permit for an ALU must be approved and issued prior to the construction of an ALU. The ALU shall have an interconnected smoke alarms per Section R313.2.1 of the 2006 IRC Building Code. A permit will be requested prior to construction.*

Chairman Seabury stated that the applicant had also initialed all of the paragraphs on the bottom of the application which indicated that he concurred with what they said.

Chairman Seabury asked if there were anyone else present who wished to speak in favor, in opposition, or neutrally with regard to the application. No one else came forward.

Chairman Seabury declared the matter before the Board.

Ms. Shuman stated that again, she had the same issue of greater than 50% because when she had done the math she came up with 893 SF.

Ms. Shuman asked how the applicant came up with 318 SF on the top floor. Mr. Bellorado replied that the sides were currently unusable crawl spaces.

Mr. Dearborn asked if a second egress was required on the second floor. Mr. Oleksak replied that egress windows were a direct means of getting outside.

Mr. Dearborn made a motion to approve the request for an Accessory Living Unit.

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Mr. Nolin seconded the motion.

Mr. Dearborn, speaking on his motion, stated that he felt the applicant has satisfied all of the requirements for an ALU and there were no abutters present to oppose the request.

Mr. Nolin, speaking on his second, stated that he agreed with everything Mr. Dearborn had said.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to approve the request for an Accessory Living Unit, and to record the members' votes, which were as follows:

Mr. Dearborn	To approve
Mr. Nolin	To approve
Mr. Houle	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

Chairman Seabury declared that, there having been five votes to approve the request for an Accessory Living Unit, the motion had carried.

IV. REQUEST FOR REHEARING

Chairman Seabury stated that there was no one present to speak on behalf of the request.

Chairman Seabury stated that the request had been deferred from the last meeting as there were members of the Board who had heard the original case but were not in attendance at the last meeting.

Chairman Seabury stated that he had a letter from Mario and Denyse Plant, Green Mountain Partners Realty Trust, dated February 18, 2014, addressed to the Hudson Zoning Board of Adjustment.

Ms. Shuman made a motion to suspend reading the letter into the record on the grounds that it had been in the possession of the Board members' for more than a week and had ample opportunity to review the documentation.

Mr. Dearborn seconded the motion.

Chairman Seabury called for a verbal vote and he then said that all of the sitting Board members were in favor of suspending reading the letter aloud. (Recorder's Note: The letter is a matter of public record and is available to be viewed in the Community Development Department)

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Chairman Seabury asked if there were any members of the Board who had issues with the applicability of the request.

Mr. Dearborn stated that his concern was not so much the demand for small apartments as his concern of the 13 out of the 15 apartments that were undersized as defined by the zoning ordinance – some of them were substantially undersized, and that was why he had a concern. He further stated that the letter did not address the undersized apartments other than the fact that it stated there was a demand for small apartments in this particular area.

Chairman Seabury stated that there had been a great deal of concern regarding a safe egress in the event of a fire. He further stated that Mr. Martin had made the point that the occupants of the rooms would have no other way out than to go into the hallway and his concern was that the fire might have been in the hallway.

Chairman Seabury also said that another concern was that people coming into these apartments – that it sounded really good that there could be a single working person looking for these affordable apartments but that there was an inevitable concern that what comes in as a single person will become a couple and then that couple would have children. He said that the Board as a whole did not think it was an appropriate environment for children.

Ms. Shuman stated that there was also an issue with the applicant proving what the hardship on the property was. She further stated that the letter did not address that with the exception of expressing financial issues which the Board had said in the past were not hardship issues.

Chairman Seabury stated that the Board had already given Mr. Plante permission to have apartments on the second floor years ago but that apparently he was now saying that the building was not conducive to regular sized apartments.

Ms. Shuman asked what size the apartments were back then. Chairman Seabury replied that he did not remember but that he also did not remember the size of the apartments being an issue. He said that the question was whether or not he could have apartments located in a business building and that a majority of the Board felt it was an acceptable mixed use. He said that for whatever reason, Mr. Plante never created the apartments but that the Board was agreeable to having legal sized apartments in there.

Ms. Shuman stated that she had the same concern as Mr. Dearborn regarding the amount of undersized apartments that were being requested.

Mr. Oleksak stated that the building had a sprinkler system and that when such a system was present, egress standards changed a little bit but that was the Fire Department's purview.

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Ms. Shuman asked if it were different if there were apartments on the top floor and any type of business, such as a restaurant, operating on the bottom floor. Mr. Oleksak replied that the sprinklers were heat sensitive and would only go off in the room that the fire was in.

Ms. Shuman stated that she still did not feel the applicant met the criteria for hardship on the property.

Chairman Seabury said that was not the issue before the Board. He said the issue before the Board was whether or not the Request for a Rehearing satisfied either one or both of the two requirements that the Board had stipulated for granting rehearings.

Mr. Nolin said that the apartments were not in existence yet and there was a sprinkler system. He said for those reasons he felt a plan that was compliant could be laid out. Mr. Nolin also said that he did not feel the applicant presented any new information.

Mr. Oleksak said that he did feel that smaller apartments had a use in particular places such as large metropolitan areas. He further said he wasn't sure how they would fit in Hudson.

Ms. Shuman said that one of her concerns was that while one person might rent such an apartment that it would turn into two or more people living there.

Mr. Oleksak stated that there should be a clause in the lease which would give the landlord the authority to enforce such a situation of overcrowding.

Chairman Seabury stated that he wasn't sure that the Board, under state law, had the right to restrict it to single persons.

Chairman Seabury stated that he felt the correct way to handle the situation was to get the ordinance changed and not by a Variance.

Mr. Dearborn stated that he agreed.

Chairman Seabury asked if there were anyone present who felt that the Board had made an illegal or illogical decision in denying the request. No one came forward.

Chairman Seabury asked if there were anyone present who felt the information supplied at this meeting was such that would lead a majority of the members to change their initial decisions. No one came forward.

Ms. Shuman made a motion not to rehear the case.

Mr. Nolin seconded the motion.

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Ms. Shuman, speaking on her motion, stated that she did not feel the Board was presented with any new information that would change the decision that was already made.

Mr. Nolin, speaking on his second, stated that he did not see any hardship on the property and that there was no new information presented that would force the Board to change the initial decision to deny the request.

VOTE: Chairman Seabury asked Clerk Dearborn to poll the Board on the motion to deny the Request for a Rehearing, and to record the members’ votes, which were as follows:

Ms. Shuman	To deny
Mr. Nolin	To deny
Mr. Houle	To deny
Mr. Dearborn	To deny
Mr. Seabury	To deny

Chairman Seabury declared that, there having been five votes to deny the Request for a Rehearing, the motion had carried.

V. APPROVAL OF MEETING MINUTES

The following changes/edits were made to the meeting minutes of the February 27, 2014, meeting minutes:

1. Page 1 and throughout – “Planning Board” was changed to “Zoning Board of Adjustment” – Shuman

Mr. Nolin made a motion to approve the minutes from the February 27, 2014, meeting, as amended by the Board.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the February 27, 2014, meeting, as amended by the Board.

The following changes/edits were made to the meeting minutes of the March 27, 2014, meeting minutes:

1. Page 1 and throughout – “Chairman Martin” was changed to “Acting Chairman Martin” – Shuman
2. Page 5, 1st paragraph – “that” was changed to “than” – Shuman

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3. Page 6, 2nd paragraph – “affect” was changed to “effect” – Seabury
4. Page 9, 7th paragraph – “Attorney Westgate replied that would be promptly” was changed to “Attorney Westgate that it would be removed promptly” – Shuman
5. Page 12, 4th paragraph – the word “indiscrete” was changed to “discrete” – Seabury
6. Page 20 – “Chairman Seabury” was changed to “Acting Chairman Martin” - Dearborn

Mr. Nolin made a motion to approve the minutes from the March 27, 2014, meeting, as amended by the Board.

Ms. Shuman seconded the motion.

Chairman Seabury called for a verbal vote, and he then declared that all of the voting Board members were in favor of approving the minutes from the March 27, 2014, meeting, as amended by the Board.

VI. OTHER BUSINESS

Mr. Oleksak stated that he had received a phone call from someone asking if they had an in-home business where cakes were made and then personally delivered, if permission from the ZBA was needed in the form of a Home Occupation Special Exception. He continued by saying that there were no customers coming/going into the house to place orders or to pick up the finished products. He also said that there would be no deliveries made to the house and there would not be a sign.

Mr. Oleksak said that the State of New Hampshire, with regard to food service licensing, had something called a Homesteading Act and if the business earned under \$10,000 there was a small license given but if went over \$10,000, it fell into a different category.

Chairman Seabury asked how the business would be advertised. Mr. Oleksak replied that he did not know.

Ms. Shuman stated that her daughter-in-law, who used to live in Hudson, had a baking business and that she had advertised the business on the internet. She further stated that the Town of Hudson had shut the business down because she did not have permission to operate a business out of her home.

Ms. Shuman stated that she felt a baking business of this kind was exactly what the ordinance was designed for with regard to a Home Occupation Special Exception.

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Mr. Dearborn asked if the business would be advertised. Mr. Oleksak replied that even if the business was advertised, that it was just a medium for doing work. He said it would still not create more traffic.

Mr. Nolin asked what would happen when the business was so busy that the owner did not have time to deliver the product. He said he felt that people would start coming to the house.

Chairman Seabury suggested that the Board should advise Mr. Oleksak that it was not considered a home occupation per se, since there would be no customers on-site and no driveway or parking issues. He also said that the business owner should be informed that in the event the Community Development Department received any complaints from neighbors in the future, that a very stringent look would have to be taken.

Ms. Shuman said that she felt the ordinance had to be re-visited because more and more people were working from home.

Chairman Seabury declared that all of the sitting Board members did not feel the business owner needed to appear before the ZBA at this point in time.

VII. ADJOURNMENT

All scheduled items having been processed, Ms. Shuman made a motion to adjourn the meeting.

Mr. Nolin seconded the motion.

VOTE: All members voted in favor. The motion passed unanimously.

Chairman Seabury declared the meeting to be adjourned at 10:01pm.

Date: May 1, 2014

J. Bradford Seabury, Chairman

Recorder: Trish Gedziun